



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170413393-8487-02; RTID 0648-XC555]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Partial Holdback of Commercial Quota for Gag in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; commercial quota holdback.

SUMMARY: NMFS issues this temporary rule to withhold a portion of the commercial allocation of gag for the 2023 fishing year in anticipation of an upcoming rulemaking that would amend the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) by implementing interim measures to reduce overfishing of gag. These interim measures would, in part, reduce the commercial sector annual catch limit (ACL) and quota. This temporary rule will withhold the distribution of gag individual fishing quota (IFQ) allocation on January 1, 2023, to shareholders in the Groupers and Tilefishes IFQ (GT-IFQ) program in the amount equal to the anticipated reduction in the

commercial quota.

DATES: This temporary rule is effective from January 1, 2023, until June 1, 2023.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *daniel.luers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the Gulf of Mexico (Gulf) includes gag and is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Gulf gag fishery is divided into commercial and recreational sectors, with a stock ACL that is allocated 39 percent to the commercial sector and 61 percent to the recreational sector. The commercial sector is managed under the GT-IFQ program and landings are constrained to the commercial quota, which is reduced from the commercial ACL. Recreational harvest is currently permitted from June 1 each year until NMFS projects that recreational landings reach the recreational ACL. If the recreational ACL is exceeded, recreational harvest is constrained the following year to the recreational annual catch target

(ACT). All weights described in this temporary rule are in gutted weight.

In January 2022, NMFS notified the Council that gag is overfished and undergoing overfishing. The Council is developing an amendment to the FMP to end overfishing and rebuild the stock that NMFS expects to implement in January 2024. In July 2022, the Council sent a letter to NMFS recommending interim measures to reduce overfishing for the 2023 fishing year. These interim measures would reduce the gag catch limits and modify the recreational season. NMFS is working on a proposed temporary rule to implement the interim measures and expects any final rule implementing these measures to be effective before the current recreational season opens on June 1, 2023.

The interim measures would reduce the current commercial ACL and commercial quota from 1.217 million lb (0.552 million kg) and 939,000 lb (426,000 kg), respectively, to 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg). Under the GT-IFQ program, annual quota is distributed to IFQ shareholders as allocation (including multi-use allocation) on January 1, and most IFQ program participants begin to use or transfer their allocation early in each year. After shareholders begin transferring or landing allocation, NMFS is not able to retroactively withdraw allocation

from shareholder accounts if a commercial quota decrease became effective after the beginning of the fishing year. Regulations at 50 CFR 622.22(a)(4), authorize NMFS to withhold distribution of IFQ allocation on January 1 in the amount equal to an expected reduction in the commercial quota. Accordingly, through this temporary rule NMFS withholds distribution of the portion of the 2023 commercial quota of gag equal to the anticipated reduction recommended by the Council.

NMFS notes that the interim measures recommended by the Council included a commercial quota of 199,157 lb (90,336 kg) for 2023. However, the analyses supporting the implementation of interim measures use a commercial quota rounded to the nearest thousand (199,000 lb (90,265 kg)), consistent with the format of the current gag quota. Therefore, this temporary rule withholds 740,000 lb (335,658 kg) of allocation from the current commercial quota of 939,000 lb (425,923 kg). NMFS will distribute the available allocation, including multi-use allocation, on January 1, 2023.

If NMFS does not implement the interim action and associated temporary rule by June 1, 2023, then NMFS will distribute the withheld allocation back to the current shareholders, as determined by the shares held

on the same date that NMFS distributes the withheld IFQ quota.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.22(a)(4), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulation at 50 CFR 622.22(a)(4) has already been subject to notice and public comment, and the public is aware that the Council requested interim measures to reduce overfishing for the 2023 fishing year. Therefore, all that remains is to notify the public that a portion of the commercial gag allocation in 2023 will be withheld to allow for the implementation of the interim measures in 2023. Such procedures are contrary to the public interest because notice and comment would not allow NMFS to implement the interim measures to reduce overfishing for the 2023 fishing year. If NMFS does not withhold the necessary commercial gag allocation,

shareholders can begin transferring or landing allocation on January 1, 2023, and NMFS would not be able to retroactively withdraw allocation from shareholder accounts.

For the reasons previously stated, the NMFS Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d) (3) .

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2022.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.